IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 35585 of 2005(J)

OS.358/2001 of PRL.SUB COURT,TRIVANDRUM

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PETITIONER:

VIJAYAKUMAR, SON OF GOVINDAN NAIR,
VIJAYA BHAVAN, SWATHI LANE, VISHAMBARAN ROAD,
PAPPANAMCODE, NEMOM VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER

RESPONDENT:

SREEKANTAN NAIR, SON OF SUKUMARAN NAIR,
TC.53/2300, VIJAYA BHAVAN, NEMOM P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.RAMACHANDRAN NAIR
SRI.R.V.ABHISHEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.35585/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.358/01 OF PRL. SUB COURT, THIRUVANANTHAPURAM.

EXT.P2 – TRUE COPY OF AGREEMENT DT.14.11.2000

EXT.P3 – TRUE COPY OF THE WRITTEN STATEMENT IN EXT.P1 SUIT.

EXT.P4 – TRUE COPY OF PROOF AFFIDAVIT IN EXT.P1 SUIT.

EXT.P5 – CARBON COPY OF ORDER DT.13.12.05 IN EXT.P1 SUIT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.35585 OF 2005

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DATED THIS THE 11TH JUNE, 2007

J U D G M E N T

Ext.P2 document, styled as an agreement, was put in evidence by the plaintiff in a suit for recovery of money. Marking of the document was objected by the respondent-defendant who contended that the document, though styled as an agreement, is a bond and should have been stamped as a bond. The above objection was upheld by the learned Sub Judge who passed Ext.P5 order directing the petitioner to pay Rs.3950/- by way of deficit stamp duty and Rs.40,000/- by way of penalty. The learned Sub Judge further directed that if the total amount of Rs.43,950/- is not paid by the plaintiff-petitioner, the amount should be realised from him as a debt under the Revenue Recovery Act and the document shall be forwarded to the District Collector for initiating proceedings under the Revenue Recovery Act.

2. I have heard Sri.V.Suresh, counsel for the petitioner and Sri.Poovappally M.Ramachandran Nair, counsel for the respondent.

3. Sri.Suresh would invite my attention to the definition of "bond" in the Kerala Stamp Act and to the judgment of K.T.Thomas, J. in **Mathai Mathew v. Thampi** (1989 (1) KLT 138) and that of

M.Sasidharan Nambiar, J. in **Radha v. Sankaranarayanan** (2007 (1) KLT 20). Counsel submitted that even if two constructions are possible, since the construction that Ext.P2 is an agreement is also possible and since that construction will be more advantageous to the assessee, the learned Judge should have permitted marking of the document as an agreement.

4. Sri.Poovappally M. Ramachandran Nair would defend Ext.P5. Counsel submitted that Ext.P2 creates the liability to pay Rs.2,00,000/-. It is attested also. It provides a condition that if the undertaking to pay the money by the stipulated date is violated, it would be open to the plaintiff to recover the amounts from the assets of the defendant even without recourse to other legal proceedings.

5. Having considered the rival submissions addressed before me, I am of the view that Ext.P2 document has got trappings of a bond. But, at the same time, the same has got trappings of an agreement also. The document is captioned as an agreement. Para.1 of the plaint filed by the petitioner-plaintiff will show that he relies on Ext.P2 document as an agreement in evidence of a loan transaction which took place between the parties on the same day. In my opinion, the document records an undertaking to discharge a pre-existing

liability. At any rate, the construction that Ext.P2 is an agreement is equally possible. The judgment in **Mathai Mathew's** case (supra) was on the basis of the judgment of the Supreme Court in **Empress Mills v. Municipal Committee** (AIR 1958 SC 341).

The result of the above discussion is, setting aside Ext.P5, I direct the learned Subordinate Judge to permit marking of the original of Ext.P2 document as an agreement and to continue with the trial in accordance with law. The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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